

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J. J.

GANGA BISHUN RAM GAJADHAR RAM

v.

JAGMOHAN RAM.*

1926.

Oct., 29.

Code of Civil Procedure, 1908 (Act V of 1908), section 60(c)—Agriculturist's house, whether attachment of illegal.

The decree-holder having attached the judgment-debtor's residential house, the latter objected to the attachment on the ground that the house was protected by section 60(c) of the Code of Civil Procedure, 1908, which exempts from attachment and sale in execution of a decree houses and buildings belonging to an agriculturist and occupied by him. In a previous execution of the same decree the judgment-debtor had entered into an agreement with the decree-holder that he would pay the amount of the decree by instalments, and, as security, he declared that he mortgaged his residential house. No mortgage, however, was registered. *Held*, that the judgment-debtor was estopped from pleading that the house was not saleable.

Bhagwandas v. Hathibhai (1), *Bhola Nath v. Mussamat Kishori* (2) and *Uzir Biswas v. Haradeb Das Agarwala* (3), followed.

Appeal by the decree-holder.

The facts of the case material to this report are stated in the judgment of Ross, J.

Sarjoo Prasad, for the appellant.

Chandreshwari Prasad Sinha for *Sambhu Saran*, for the respondents.

Ross, J.—This is an appeal against an order of the learned Judicial Commissioner of Ranchi

* Appeal from Appellate order no. 119 of 1926, from a decision of G. Rowland, Esqr., i.c.s., Judicial Commissioner of Chota Nagpur, dated the 19th February, 1926, confirming an order of Babu N. K. Singh, Deputy Magistrate Subordinate Judge of Palamau, dated the 21st March, 1925.

(1) (1880) I. L. R. 4 Bom. 25. (2) (1912) I. L. R. 34 All. 25, F. B. (3) (1919-20) 24 Cal. W. N. 575.

upholding an order by the Subordinate Judge of Palamau releasing from attachment the house of the judgment-debtors on the ground that it was not liable to attachment as being the house of an agriculturist.

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It is not necessary to discuss all the arguments that have been urged in support of the appeal, because there is one ground on which it is clear that the appellant is entitled to succeed. In a previous execution of this decree the judgment-debtor entered into an agreement with the decree-holder that he should pay the amount of the decree by instalments and in security for the amount of the decree and costs and cost of execution he declared that he had mortgaged his residential house. It appears that no mortgage was actually registered and no relief is claimed by the decree-holder on the basis of the mortgage, but he contends that as the judgment-debtor had represented that the house might be taken in satisfaction of the decree and by reason of this representation had the previous execution dismissed on compromise, therefore, he is estopped from pleading now that the house is not saleable. In *Bhagvandas v. Hathibhai* (1), it was held that the house of an agriculturist if specifically mortgaged can be taken in execution of the mortgage decree, and the decision of the Full Bench of the Allahabad High Court in *Bhola Nath v. Musammat Kishori* (2), is to the same effect. It follows from these decisions that the house of an agriculturist is not absolutely unsaleable, although section 60, clause (c), provides that it shall not be liable to attachment or sale; but the judgment-debtor can waive this privilege and sell the house of his own free will. In the present case he has entered into an agreement to give the house in security for the amount of the decree and in my opinion this estops him from pleading that the house is not saleable. The case is very similar to the case of *Uzir Biswas v. Haradab Das Agarwalla* (3). In that case the plaintiff had

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sought for attachment before judgment in a suit for money and claimed to attach an agriculturist's house among other things. There was a compromise by which the defendant undertook that his property should be sold in execution of the instalment decree thereby consented to and there it was held by the Calcutta High Court that this consent decree was binding and that the properties though not originally transferable became saleable by reason of the decree.

I would, therefore, allow this appeal and set aside the orders of the Courts below and direct that the execution do proceed against this house. In view of the fact that this point was not taken in the Court below there will be no costs of the appeal.

KULWANT SAHAY, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Das and Adami, J. J.

RAM GOPAL MARWARI

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Oct., 29.

BENGAL AND NORTH-WESTERN RAILWAY COMPANY.*

Railways Act, 1890 (Act IX of 1890), sections 77 and 140—posting of registered letter within time, whether proper service of notice—section 140, meaning of.

Section 77, Railways Act, 1890, lays down :

"A person shall not be entitled to.....compensation for the loss.....of goods.....unless his claim to..... compensation has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the delivery of.....goods for carriage by railway."

* Appeals from Appellate Decrees nos. 1041 and 1332 of 1924, from a decision of Babu Kamla Prasad, Subordinate Judge of Muzaffarpur, dated the 18th June, 1924, reversing a decision of Maulavi Muhammad Abul Barkat, Munsif of Muzaffarpur, dated the 29th September, 1923,